

E.O.

Sent to
OCC Law
Division
15 May 78

TRANSMITTAL SLIP		DATE
		10 May 1978
TO:		
ROOM NO.	BUILDING	
7D 35	Hdqs.	
REMARKS:		
<p>Per our telecon of 9 May 1978 this is a reminder that the recommendations expressed here in have not been approved. It is requested that you contact the undersigned in the event that your office contemplates any action in this matter.</p>		
<p>Respectfully,</p>		

MORI/CDF

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OLC #78-1232

9 May 1978

MEMORANDUM FOR: Chief, Community Security Group

STAT

FROM:

Personnel & Industrial Security Branch

SUBJECT: Executive Order 10450 -
Anticipated Revision Thereof

1. RECOMMENDED ACTION: It is recommended that the Director of Security brief the Director of Central Intelligence on the possible implications of the revision of EO 10450, with the anticipated exemption of CIA and the Intelligence Community. At that time the DCI should be advised of the previous CIA position in the matter as set forth in CIA memorandum dated 23 December 1976. (See tab A attached).
2. BACKGROUND: In February 1975 an intraagency organization, referred to as Project Ten, under the direction of the Domestic Council began a series of meetings which were co-chaired by a representative of the Assistant Secretary of Defense and an official of the Civil Service Commission to revise EO 10450. CIA was not invited to, and did not participate in, any of the meetings which culminated in the preparation of the draft revision which was submitted to the Office of Management and Budget in August 1976 for formal coordination within the Executive Branch. See reference thereto in the CIA memorandum dated 23 December 1976 which is attached as tab A.
3. CIA was informally advised of these efforts to revise EO 10450 in February 1976. Subsequently the Office of Security briefed the SECOM and the CIA position that is set forth in tab A was evolved. It should be noted at this point that there was no SECOM agreement as to the scope of the recommended investigative standards. In this

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connection it should be noted that the Department of Defense unilaterally reduced the scope of DOD investigations by memorandum dated 3 May 1976, by order of the Deputy Secretary of Defense, Robert Ellsworth. (See tab B attached.) The DOD policy basically provided for a five (5) year investigative scope for access to Top Secret. Access to Sensitive Compartmented Information in the Department of Defense is governed by DCID 1/14. As a result of that order military personnel now may be granted a Top Secret clearance on the basis of a favorable National Agency Name Check plus ten (10) years of continuous honorable service. Civilian employees and military personnel who do not have ten (10) years of continuous honorable service are subject to a five (5) year investigation.

4. The final draft submitted by Project Ten Committee essentially consisted of the five (5) year investigation which was implemented by the 3 May 1976 Ellsworth memorandum. The Department of State has a seven (7) year investigative requirement for access to Top Secret information.

5. From the foregoing it should be apparent that there is no agreement within the Intelligence Community as to the scope of investigations for non-SCI access. The Investigative Standards Working Group has been unable to reach an agreement in this area, notwithstanding the fact that two (2) surveys have been conducted since 1976 which have indicated that the five (5) year investigative scope is inadequate. The DOD representatives and others concede this point but are reluctant to take any official position inconsistent with the Ellsworth directive of 3 May 1976, which was taken to offset the reduction in DOD resources as a result of a DOD budget curtailment.

6. No positive action was apparently taken by OMB on the 23 December 1976 Agency position as set forth in tab A. In April 1977 I was advised that a working group would be established to reconsider the matter. However, in May 1977 I was advised that the decision had been made by the OMB to refer the entire matter to the CSC for the preparation of a new draft for OMB. This was accomplished unilaterally by CSC, without Agency coordination, in August 1977. The CSC draft that was submitted to OMB exempted CIA and the Intelligence Community. (See bottom of page two (2) of tab C.) Since that time OMB has delayed further action on the matter due to other priorities. The last

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information received from the Office of Legislative Council indicates that the proposed new Executive Order is still under active consideration however, has been deferred for more pressing matters. It could be reactivated at any time and reportedly is ready for submission to the agencies for formal coordination.

7. It is unknown at this point if CIA and the Intelligence Community will be exempt from the final draft that OMB will submit for Agency coordination. However, it is believed that this will be the case. If this is the case then it is submitted that it will be incumbent upon the Community Security Group to come forward, in a relatively short time, with a coordinated written policy directive (like a DCID). If this is not done I submit that the DCI and the Intelligence Community will be subject to severe criticism. As indicated above there is a fundamental disagreement as to the proper scope of investigations within the Intelligence Community and therefore a compromise will have to be reached among the SECOM members which will be less than the recommended CIA position. We can, I suppose, say that this is the minimum standard and take the position within CIA that we will continue to follow our own higher standards - that the mission of CIA requires same. However, I submit that this is less than desirable and that we should continue to strive for one uniform standard, not only in the Intelligence Community but throughout government, as set forth in the former DCI George Bush memo of 23 December 1976 (tab A).

8. In addition to the foregoing it is further assumed that there will be no provision for oversight for the Intelligence Community. (In the last CSC draft the National Security Council was assigned a oversight role over the CSC and the Department of Justice in the operation of the proposed new Federal Personnel Security Program.) Consideration should be given as to the degree and organizations which properly should perform such oversight for the Intelligence Community. In this connection it is not believed that the Community Security Group would be appropriate for this function - perhaps this would be an appropriate function for the Intelligence Oversight Board or some other external group, including the congressional oversight committees.

9. During my recent informal conversations with a representative of the Office of Legislative Counsel we considered the pros and cons of proposing that OMB, instead of exempting CIA and the Intelligence Community, issue a

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separate Executive Order for CIA and the Intelligence Community, or accomplish the same objectives by amending EO 12036. I am not in favor of this approach because I feel that it will raise all sorts of political questions as to the reasons for the different treatment and the lack of due process guarantees, etc., for the Intelligence Community as opposed to the rest of the Executive Branch. In conclusion, I think the best approach is to leave the OMB alone and to accept the exemption for the CIA and Intelligence Community, if it is in the draft submitted for Agency coordination.

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Attachments



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